



ARKANSAS JUDICIARY

Published on *Arkansas Judiciary* (<https://courts.arkansas.gov>)

Rule 6. Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or other day when the clerk's office is closed, in which event the period runs until the end of the next day that the clerk's office is open. When the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation. As used in this rule and Rule 77(c), "legal holiday" means those days designated as a holiday by the President or Congress of the United States or designated by the laws of this State.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of mistake, inadvertence, surprise, excusable neglect, or other just cause, but it may not extend the time for taking an action under Rules 4(i), 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) For Motions, Responses, and Replies. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 20 days before the time specified for the hearing. Any party opposing a motion shall serve a response within 10 days after service of the motion. The movant shall then have 5 days after service of the response within which to serve a reply. The time periods set forth in this subdivision may be modified by order of the court and do not apply when a different period is fixed by these rules, including Rules 56(c) and 59(d).

(d) Additional Time After Service by Mail or Commercial Delivery Company. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, commercial delivery company, or electronic transmission, including e-mail pursuant to Rule 5(b)(2), three (3) days shall be added to the prescribed period. Provided, however, that this subdivision shall not extend the time in which the defendant must file an answer or pre-answer motion when service of the summons and complaint is by mail or commercial delivery company in accordance with Rule 4.

Reporter's Notes to Rule 6: - 1. This Rule is practically identical to FRCP 6. Section (a) has been changed somewhat by omitting a recitation of specific legal holidays within the definition of legal holiday. It is redundant to list specifically the holidays and then add to the list "any other day appointed as a holiday by the President of [or] the Congress" or by the State.

2. This Rule does not substantially change previous Arkansas practice. As before, trial judges are given broad discretion in most instances to extend the various periods of time within which certain actions must be taken. The exceptions are noted in Section (b).

Addition to Reporter's Note, 1986 Amendment: - Rule 6(a) is amended, consistently with the federal rule, to extend the exclusion of intermediate Saturdays, Sundays, and legal holidays to the computation of time periods less than 11 days. Under the former version of the rule, parties bringing motions under rules with 10-day periods could have as few as five working days to prepare their motions.

Addition to Reporter's Notes, 1988 Amendment: - Rule 6(d) is amended to make plain that a defendant does not have an extra three days to file an answer or preanswer motion under Rule 12 when the summons and complaint are served by mail pursuant to Rule 4. Allowing a defendant an additional three days to answer in the event of service by mail would be a "bonus" not available to a defendant served by another method. Under Rule 12(a), a defendant must answer or file a preanswer motion within a given number of days "after the service of summons and complaint upon him." The specified time period thus begins to run when the defendant receives the summons and complaint, irrespective of the manner in which it is served. Rule 6(d) continues to apply with respect to pleadings and papers other than the complaint, however, for service of these materials by mail is presumptively complete upon mailing, Rule 5(b), Ark. R. Civ. P. Thus, the three-day extension provided by Rule 6(d) is necessary to compensate for the "lag time" between the mailing of these papers and their delivery.

Addition to Reporter's Note, 1990 Amendment: - Rule 6(b) is amended to correspond to the changes made in Rule 55 regarding default judgments. Under revised subdivision (b)(2), the court may, upon motion, extend the time for filing an answer (or for other action) after the relevant period has expired if the failure was the result of "mistake, inadvertence, surprise, excusable neglect, or other just cause." This standard, which mirrors that employed in Rule 55(c)(1) with respect to the setting aside of a default judgment, is intended to liberalize Arkansas practice. Under former Rule 6(b), an extension of time was permissible only where the failure to act was the result of "excusable neglect, unavoidable casualty or other just cause."

Addition to Reporter's Notes, 2000 Amendment: - The time period in the third sentence of subdivision (a) has been changed from eleven days to fourteen days, the intent being to eliminate confusion in the computation of response time when a motion has been served by mail under subdivision (d).

Addition to Reporter's Notes, 2002 Amendment: - Rule 6(c) has been amended to clarify the timing of motions, responses, and replies. A related change with respect to motion practice has been made in Rule 7(b), which governs the form and content of motions, responses, and replies. Cross-references to Rules 6(c) and 7(b) have been added to Rule 12(i) and Rule 78(b).

Under the prior version of subdivision (c), a written motion and notice of hearing had to be served no later than ten days prior to the date set for hearing. At the same time, Rule 78(b) provided a ten-day period for a response and a five-day period for reply. As a result, there might be no time for a reply. To address this problem, the ten-day period in subdivision (c) has been expanded to twenty days. Also, the provisions governing the timing of responses and replies have been shifted from Rule 78(b) to subdivision (c). As was previously the case, the court may modify the time periods by order. These periods are inapplicable when a different time frame is established by another rule, e.g., Rule 56(c) (motions for summary judgment).

The provision in the former version of subdivision (c) as to supporting affidavits now appears in Rule 7(b)(2).

Addition to Reporter's Notes, 2003 Amendment: - Subdivision (a) has been amended to address the situation in which the clerk's office is closed for reasons other than weekends and legal holidays. The amendment incorporates the Supreme Court's holding in *Honeycutt v. Fanning*, 349 Ark. 324, 78 S.W.3d 96 (2002), and makes Rule 6(a) consistent with, though not identical to, its federal counterpart.

Subdivision (d) of the rule has been rewritten to include commercial delivery companies. The amended subdivision applies when service of papers, other than the summons and complaint, is by mail or by commercial delivery company.

Addition to Reporter's Notes, 2004 Amendment: - Subdivision (b) of the rule has been amended by adding Ark. R. Civ. P. 4(i) to the list of exceptions, thereby codifying the holding in *Smith v. Sidney Moncrief Pontiac*, No. 02 449 (June 19, 2003).

Addition to Reporter's Notes, 2010 Amendment: Subdivision (d) has been amended to add the three-day additional response time allowed for service by mail or commercial delivery company to the time permitted for response to service by electronic transmission, including by e-mail, under Rule 5(b)(2).

History Text:

History. Amended July 7, 1986, effective September 15, 1986; amended November 21, 1988, effective January 1, 1989; amended December 10, 1990, effective February 1, 1991; amended November 11, 1991, effective January 1, 1992; amended January 27, 2000; amended January 24, 2002; amended March 13, 2003; amended January 22, 2004.

Associated Court Rules:

Rules of Civil Procedure

Group Title:

II. Commencement of Action; Service of Process, Pleadings, Motions, and Orders

Source URL: <https://courts.arkansas.gov/rules-and-administrative-orders/court-rules/rule-6-time>